

1 MORGAN LEWIS & BOCKIUS LLP  
2 Thomas F. Gede (SBN 99295)  
3 tom.gede@morganlewis.com  
4 Ella Foley Gannon (SBN 197591)  
5 ella.gannon@morganlewis.com  
6 Colin C. West (SBN 184095)  
7 colin.west@morganlewis.com  
8 Three Embarcadero Center  
9 San Francisco, California 94111-4067  
10 Telephone: 415.393.2000

11 Attorneys for Appellant  
12 Santa Ynez Valley Concerned Citizens

13 UNITED STATES DEPARTMENT OF THE INTERIOR  
14 INTERIOR BOARD OF INDIAN APPEALS

15 IN RE: DECEMBER 24, 2014 DECISION  
16 BY PACIFIC REGIONAL DIRECTOR OF  
17 THE BUREAU OF INDIAN AFFAIRS TO  
18 TAKE INTO TRUST CERTAIN LAND FOR  
19 THE SANTA YNEZ BAND OF CHUMASH  
20 MISSION INDIANS OF THE SANTA YNEZ  
21 RESERVATION OF CALIFORNIA

Docket No. \_\_\_\_\_ [not yet assigned]

**STATEMENT OF REASONS FOR  
APPEAL**

22 Santa Ynez Valley Concerned Citizens (“Citizens”) appeals the December 24, 2014  
23 decision of the Pacific Regional Director to take into trust approximately 1,427.78 acres in the  
24 County of Santa Barbara, California for the Santa Ynez Band of Chumash Indians, for the  
25 following reasons and as may be further described in briefs submitted hereafter. A copy of the  
26 decision being appealed is attached as **Exhibit A**. Citizens received a copy of this decision on  
27 January 5, 2015.

28 Citizens is an association of property owners, residents and ranchers, businesspeople,  
conservationists and local stakeholders dedicated to uphold the Santa Ynez Valley's tradition of

1 sound community planning and hold all developers to the same land-use laws and environmental  
2 regulations. It was created in 2000 and has approximately 1000 members in the Santa Ynez  
3 Valley and Santa Barbara County.

#### 4 IDENTIFICATION OF THE CASE

5 This appeal arises out of the decision of the Pacific Regional Director (“Director”) to  
6 approve a project that will convert more than 1,400 acres of agricultural land commonly known  
7 as “Camp 4” into housing and supporting infrastructure for the Santa Ynez Band of Chumash  
8 Indians (“Tribe”), without preparing an Environmental Impact Statement (“EIS”). The Bureau  
9 of Indian Affairs, like any federal agency, is required under the National Environmental Policy  
10 Act (“NEPA”) to prepare an EIS whenever it undertakes or approves an action that will have a  
11 significant effect on the environment. 42 U.S.C. § 4331. The stated purpose of this law is to  
12 ensure that the environmental consequences of all such actions are thoroughly considered, and  
13 the public is made aware of all foreseeable environmental impacts, mitigating factors, and  
14 project alternatives. *Id.*

15 In this case, no EIS was prepared for the decision to take Camp 4 into trust for the Tribe,  
16 a decision that will result in the development of “up to 143 residential units, as well as  
17 supporting infrastructure” on land currently zoned for agriculture. Instead, the Director prepared  
18 an Environmental Assessment (“EA”) and a Finding of No Significant Impact (“FONSI”),  
19 documents that may be used in place of an EIS only where the proposed action will not have a  
20 significant impact on the environment. 40 C.F.R. §§ 1500.4(q) and 1508.13.

21 Pursuant to NEPA, the Director is required to take a hard look at the environmental  
22 consequences of approving the Project prior to agreeing to take the land in question into trust.  
23 *League of Wilderness Defenders-Blue Mountains Biodiversity Project v. U.S. Forest Service*, 689  
24 F.3d 1060, 1075 (9th Cir. 2012). As is documented in the comment letters submitted to the  
25 Director on the draft EA, the documents prepared here are deficient in numerous ways. These  
26 include, among others: the existence of evidence (presently unaddressed) of the adverse and  
27 unmitigated impacts of the proposed tribal housing expansion on endangered species and unique  
28 habitats; the failure of the Director to adequately consider cumulative impacts of this and related

1 Tribe expansion projects; and the complete lack of consideration of certain viable project  
2 alternatives. The weight of evidence suggests that this decision will have a significant impact on  
3 the environment, but at a bare minimum, these deficiencies in the review raise “substantial  
4 questions” about whether the decision will have such an effect. In light of this, the Director’s  
5 decision to accept the land into trust without preparing an EIS is unlawful and is grounds for a  
6 reversal of the decision.

7 Further, the Director failed to consider or did not adequately analyze criteria set forth in  
8 the regulations governing trust acquisitions (25 C.F.R. §§ 151.10 and 151.11). The Director did  
9 not properly consider the loss of revenue to the County of Santa Barbara; the possibility that the  
10 Tribe will elect to use the land for some purpose other than that stated in its application; potential  
11 conflicts of land use that may arise; the absence of a real need for the acquisition of the entire  
12 1400+ acres; or the geography and current use of the land in the region. Each of these failures is  
13 contrary to law and each serves as an independent basis for this appeal.

14 As will be fully briefed by Citizens under IBIA procedures, Citizens is an interested party  
15 whose members have concrete environmental, aesthetic and economic interests that are  
16 cognizable, legally protected interests injured by the decision of the Director. Among the  
17 purposes of Citizens is to protect the rural character, scenic beauty, and the air and water quality,  
18 of the Santa Ynez Valley, and to ensure all property in the Santa Ynez Valley is subject to same  
19 land-use laws and environmental regulations consistent with existing land-use planning  
20 processes. The injury to these and other important interests of Citizens are caused by the  
21 Director’s decision.

22 “Decisions of BIA officials on requests to take land into trust are discretionary, and the  
23 Board does not substitute its judgment in place of BIA’s judgment in discretionary decisions.”  
24 *South Dakota v. Acting Great Plains Regional Director*, 49 IBIA 84, 98-99 (2009). However,  
25 neither the failure to prepare an EIS nor the failure to adequately consider criteria set forth in 25  
26 C.F.R. §§ 151.10 and 151.11 are options subject to the Director’s discretion. Rather, they are  
27 explicitly required by law, and their absence constitutes an abuse of that discretion. For these  
28

1 reasons, for the reasons set forth below, and for the reasons that will be further articulated in  
2 subsequent briefing, the Director’s decision to take Camp 4 into trust should be vacated.

3 **STATEMENT OF REASONS**

4 **A. The Decision Does Not Comply with the National Environmental Policy Act**

5 The Director is required under NEPA to evaluate the potential impacts of taking Camp 4  
6 into trust before taking action on the Tribes application; here, the Director purportedly satisfied  
7 this application through the preparation of the EA and FONSI. Exhibit A, p. 24. Deficiencies in  
8 these reports show that the reviewing agency did not take the required “hard look at the  
9 environmental consequences of the proposed action.” *Anderson v. Evans*, 371 F.3d 475, 487  
10 (9th Cir. 2002) (internal citations omitted). The FONSI and the EA on which it is based do not  
11 adequately analyze some key issues, and fail completely to consider others. These issues raise  
12 “substantial questions” about whether the Director’s environmental review was as  
13 comprehensive as NEPA requires and therefore, the decision should be reversed. *See Id.* at 488  
14 (NEPA requires the preparation of an EIS when the evidence before the agency demonstrates  
15 that “there are substantial questions whether a project may have a significant effect on the  
16 environment.”)

17 Specific flaws in the FONSI and EA are described in detail in comment letters submitted  
18 by Citizens and by the County of Santa Barbara. These letters (the “Comment Letters”) are  
19 attached hereto as **Exhibit C** (July 11, 2014 Letter from County of Santa Barbara), **Exhibit D**  
20 (July 13, 2014 Letter from Citizens), and **Exhibit E** (November 14, 2014 Letter from County of  
21 Santa Barbara).

22 The EA and the FONSI fail to acknowledge or understate numerous significant impacts,  
23 rely on inadequate or unenforceable mitigation measures, do not meaningfully analyze  
24 cumulative impacts or a reasonable range of alternatives and rely on unsupported and often  
25 unsupportable facts. By way of example, the following three deficiencies demonstrate the range  
26 of problems found in the EA and the FONSI. First, there is substantial, if not overwhelming  
27 evidence that the proposed development on the land will result in significant loss of important  
28 agricultural land. In the face of this evidence, the EA attempts to obscure this impact by

1 focusing on the amount of agricultural land that will remain in the County as a whole and by  
2 understating the level of direct impacts that will occur and failing to even consider the indirect  
3 impacts that could occur. This does not constitute a “hard look” at the potential impacts that  
4 could occur to agricultural resources.

5 Second, the EA and FONSI fail to properly quantify and analyze cumulative impacts of  
6 the proposed trust acquisition together with past and current projects, and foreseeable future  
7 development. A detailed consideration of “the incremental impact of the action when added to  
8 other past, present, and reasonably foreseeable future actions” is explicitly required under NEPA.  
9 40 C.F.R. § 1508.7; *see also* 40 C.F.R. § 1508.25(a)(2) and (c). Here, the EA and FONSI do not  
10 include such an analysis and instead impermissibly rely on very general anticipated development  
11 plans. *See Klamath-Siskiyou Wildlands Ctr. v. Bureau of Land Mgmt.*, 387 F.3d 989, 993-997  
12 (9th Cir. 2004) (Environmental Assessments that described other nearby projects without  
13 providing “a quantified assessment of their combined environmental impacts” did not comply  
14 with NEPA). Most glaringly, the analysis even failed to consider the potential cumulative  
15 impacts that could occur as a result of development of a 6.9-acre area that the BIA allowed to be  
16 taken into trust in 2005<sup>1</sup> and on which the Tribe plans to develop tourist attractions and  
17 supporting infrastructure. That acquisition is not mentioned in the EA, and is addressed in the  
18 FONSI for the first time only in response to public comments. This does not constitute a  
19 thorough consideration of cumulative impacts and constitutes a grounds for reversal. *See*  
20 Council on Environmental Quality, Guidance on the Consideration of Past Actions in  
21 Cumulative Effects Analysis (June 24, 2005), available online at  
22 [http://energy.gov/sites/prod/files/nepapub/nepa\\_documents/RedDont/G-CEQ-  
24 PastActsCumulEffects.pdf](http://energy.gov/sites/prod/files/nepapub/nepa_documents/RedDont/G-CEQ-<br/>23 PastActsCumulEffects.pdf) (agencies considering cumulative effects are required to analyze and

25 <sup>1</sup> Citizen groups appealed BIA’s 2005 decision to take the 6.9 acre parcel into trust to the Board, and the Board  
26 dismissed those appeals for lack of standing (*see Santa Ynez Valley Concerned Citizens v. Pacific Regional*  
27 *Director*, 42 IBIA 189 (2006) and *Preservation of Los Olivos v. Pacific Regional Director*, 45 IBIA 98  
28 (2007)). The District Court for the Central District of California subsequently vacated the dismissal of the  
appeals and remanded the matter to the Board. *Preservation of Los Olivos v. U.S. Dep’t of the Interior*, 635 F.  
Supp. 2d 1076 (C.D. Cal. 2008). In 2014, the Board again dismissed the appeals. *Preservation of Los Olivos*  
*v. Pacific Regional Director*, 58 IBIA 280 (2014).

1 describe “the identifiable present effects of past actions to the extent that they are relevant and  
2 useful in analyzing whether the reasonably foreseeable effects of the agency proposal for action  
3 and its alternatives may have a continuing, additive and significant relationship to those  
4 effects.”).

5 Finally, the FONSI and EA do not consider certain viable alternatives to the proposed  
6 action, in direct opposition of the requirement that they do so. 42 U.S.C. § 4332(2)(E) (“to the  
7 fullest extent possible . . . all agencies of the Federal Government shall . . . study, develop, and  
8 describe appropriate alternatives to recommended courses of action in any proposal which  
9 involves unresolved conflicts concerning alternative uses of available resources”). A federal  
10 agency conducting a NEPA-compliant review must “[r]igorously explore and objectively  
11 evaluate *all* reasonable alternatives . . . .” 43 C.F.R. § 1502.14 (emphasis added). Here, the  
12 FONSI considers three alternatives: two of these contemplate taking the entire 1,400+ acre site  
13 into trust, and the third is the “No Action Alternative.” No consideration is given the possibility  
14 of taking some lesser number of acres into trust, which is certainly viable in light of the  
15 dedication of 869 acres in “Alternative B” to “open space.”

16 The above deficiencies are simply three of the more glaring issues with the EA and  
17 FONSI; detailed descriptions of several other problems are set forth in the Comment Letters.  
18 Notably, the County of Santa Barbara employs experts in relevant fields who dispute the findings  
19 and conclusions of the FONSI. Where a federal agency’s decision not to prepare an EIS for a  
20 project of this significance elicits strong opposition from a governmental body with appropriate  
21 expertise, the decision should be viewed with particular skepticism. *See, e.g., Found. for N. Am.*  
22 *Wild Sheep v. U.S. Dept. of Agr.*, 681 F.2d 1172, 1182 (9th Cir. 1982) (project to reopen a road  
23 was “controversial” and required preparation of an EIS because California State agencies with  
24 relevant expertise expressed disagreement with the EA’s finding that the project would not have  
25 a significant impact on wildlife). At a minimum, the opposition to the FONSI from such experts  
26 raises substantial questions as to the significance of the environmental effects of Camp 4 trust  
27 acquisition, and triggers the requirement to prepare an EIS.

1           **B.       The Director Failed to Consider All Facts Under 25 C.F.R. §§ 151.10 and 151.11.**

2           Title 25, Code of Federal Regulations, Part 151 governs the taking of land in trust for the  
3 benefit of Indian tribes and requires specific procedures be followed by the Secretary. They  
4 include the requirement the Secretary consider various criteria in evaluating requests for the  
5 acquisition of the land in trust status, when the land is within or contiguous to the existing  
6 reservation (25 C.F.R. 151.10) and when the land is located outside of and noncontiguous to the  
7 tribe's reservation (25 C.F.R. 151.11). Both sections permit the local government, in this case,  
8 Santa Barbara County, to provide written comments about the proposed acquisition's potential  
9 impacts on regulatory jurisdiction, real property taxes and special assessments. Citizens, in its  
10 comments, has adopted and incorporated the County's comments of October 31, 2013, relating to  
11 the section 151.10 and 151.11 criteria. In any briefing ordered by the Board, Citizens will  
12 elaborate on each and every failure to consider adequately the criteria required by law and  
13 regulation.

14           The Director's Notice of Decision fails to adequately consider the criteria set forth in  
15 both section 151.10 and 151.11. These include, but are not limited to:

- 16           • **The impact on the State and its political subdivisions (25 C.F.R. § 151.10(e)).** The  
17 trust acquisition will result in an estimated loss \$300 million in tax revenues over 50  
18 years, representing funding for the County, schools, and other taxing entities that would  
19 normally be generated by the development proposed by the Tribe were it not to be placed  
20 in trust and removed from the tax rolls. These revenues are needed to pay for precisely  
21 the kind of services concomitant with the proposed tribal development (and future  
22 contingent development), including law enforcement, social service delivery, emergency  
23 services, mitigation and treatment of impacts of congested county/state roadways, water  
24 quality in waterways, water supply, degradation of habitat, air quality and response to  
25 public nuisance complaints. All of these impacts of the loss of public revenues directly  
26 and immediately affect Citizens and its members.
- 27           • **The purposes for which the land will be used (25 C.F.R. 151.10(c)).** The stated  
28 purposes are transitory and illusory, as once the land is placed in trust, the tribal

1 government is under no obligation to conform to the purposes and plans submitted to the  
2 Secretary as the basis for taking the land in trust. The Director has noted that much of the  
3 land is for unspecified “economic pursuits,” “future long-range planning,” and “land  
4 banking.” These concepts are non-specific, generic, and frankly impossible to assess and  
5 evaluate. They present uncertainty as to potentially massive future impacts on Citizens  
6 and its members. The inclusion of such open-ended, vague and generalized “pursuits” as  
7 the “purpose” of the trust acquisition cannot stand; it defeats the spirit and purpose of the  
8 law and of the BIA’s regulations requiring the Secretary’s considered evaluation of the  
9 purposes for which the land will be used. If left to stand, it renders the Director’s action  
10 superfluous and virtually immune from challenge.

11 • **Jurisdictional problems and potential conflicts of land use which may arise (25**

12 **C.F.R. 151.10(f)).** Such problems and conflicts are numerous, but are summarily  
13 dismissed by the Director as insignificant. At the same time, the Director, when  
14 discussing the need for the land, acknowledges placing the property into trust allows the  
15 Tribe to exercise its self-determination and sovereignty over the property, thereby  
16 explicitly displacing state and local regulatory authority with the tribal right to govern as  
17 predominant (state and local authority would “impair[ ] the Tribe’s ability to adopt and  
18 execute its own land use decisions and development goals.”). Noting that criminal  
19 jurisdiction may remain unchanged (which, in truth, relates only to criminal-prohibitory  
20 laws and not criminal-regulatory laws), the Director nonetheless suggests, with no  
21 analysis or consideration, that there will be no land use decisions incompatible with local  
22 land use authority, simply because the Tribe has so maintained. The County expressly  
23 noted the proposed development is incompatible with the County's General Plan, Santa  
24 Ynez Community Plan, and County land use regulations.

25 Additionally, as Citizens has noted in previously-submitted comments, the loss of  
26 jurisdictional authority affects the public’s ability uniformly to control the equitable  
27 sharing of the region’s natural resources which include water, waste water disposal,  
28 traffic circulation, law enforcement and emergency services, management of urban



1 sprawl, night sky conservation, pollution, mosquito abatement, conservation of  
2 agricultural resources as well as compatible land uses.

- 3 • **The need of the Tribe for the land (25 C.F.R. 151.10(b)).** The Director outlined the  
4 Tribe's need for the land without adequate consideration of the County's objections. The  
5 County noted that, given the need for less than 200 of the over 1400 acres of the property  
6 to be used for housing (Alternative B) and "the fact that the proposed 200 acres of  
7 residential development could be processed via the County's land use development  
8 process, the County believes there is no need for additional land to be taken into trust."  
9 The only need the Director relies on, as clearly stated in the Notice of Decision, is the  
10 need to displace state and local land use authority with tribal land use authority, and  
11 nothing more.
- 12 • **Distance from the boundaries of the Tribe's reservation (25 C.F.R. 151.11(b)).** The  
13 Director dismisses the distance between the acquisition and the Tribe's reservation as  
14 insignificant, a "mere 1.6 miles." This "analysis" fails to consider any of the geography  
15 of the region, major highways, population centers, land use and land use restrictions two  
16 miles from the reservation (which includes the urban area of Santa Ynez, ranches and  
17 open lands subject to restrictions on development).
- 18 • Other criteria are given short shrift by the Director in the Notice of Decision, all  
19 constituting an abuse of discretion and warranting a reversal.

1 **RELIEF REQUESTED**

2 For the foregoing reasons, Citizens requests the following relief:

- 3 1. That the decision of the Director to approve the trust acquisition of Camp 4 for  
4 the Tribe be reversed and vacated;
- 5 2. That the Tribe's request to take Camp 4 into trust be remanded to the Director  
6 with instructions not to act until such time as the proposed trust acquisition has  
7 been properly assessed under the National Environmental Policy Act; and
- 8 3. That the Tribe's request to take Camp 4 into trust be remanded to the Director  
9 with instructions to adequately consider all criteria set forth in 25 C.F.R. Part 151.

10  
11 DATED: January 30, 2015

Respectfully submitted,

12 Morgan Lewis & Bockius LLP

13  
14 By: 

15 Thomas F. Gede  
16 Ella Foley Gannon  
17 Colin C. West  
18 Attorneys for Appellant  
19 Santa Ynez Valley Concerned Citizens  
20  
21  
22  
23  
24  
25  
26  
27  
28